Filed 10/20/04 In re Christina T. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Plumas)

In re CHRISTINA T. et al., Persons Coming Under the Juvenile Court Law.	
PLUMAS COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. MARIA C. et al., Defendants and Appellants.	C045490 (Super. Ct. Nos. 5640, 5641, 5642, 5643)

Maria C. and Lee T. (appellants), the parents of Christina, Shannon, Nicole, and Erica (the minors), appeal from the juvenile court's orders adjudging the minors dependent children of the court and removing the minors from parental custody. (Welf. & Inst. Code, §§ 360, subd. (d), 395; further unspecified section references are to this code.) Appellants make several claims of alleged error. We affirm the orders.

We note that appellants also seek review of the juvenile court's jurisdictional findings. The jurisdictional findings are not appealable orders but are reviewable in appeals from dispositional orders. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112.)

FACTS AND PROCEEDINGS

On September 4, 2003, Plumas County Department of Social Services (DSS) filed amended juvenile dependency petitions pursuant to section 300 on behalf of five-year-old Christina, six-year-old Shannon, 12-year-old Nicole, and 15-year-old Erica. Those petitions alleged there was a substantial risk the minors would suffer serious physical harm because appellants failed to supervise the minors properly, they did not provide Shannon and Erica with adequate medical and dental care, and appellants used alcohol and marijuana on a regular basis. According to the petitions, appellants were incarcerated after they left the minors at home and became intoxicated in public. The petitions also alleged the family lacked stable and adequate housing, and that Erica had observed appellants physically assaulting each other.

The petitions averred that Erica had reported to appellants that her maternal grandfather sexually molested her, but that appellants failed to protect her. The petitions also alleged the minors had suffered serious emotional damage. According to the petitions, Lee had threatened to physically harm Shannon, and Lee told Erica that he blamed her for being jailed.

Moreover, the petitions alleged all of the minors told the social worker that Lee attempted to "coerce them into making statements so that they could return home."

According to social workers' reports prepared on behalf of the minors for the jurisdiction hearing, Erica told DSS that, when the family lived in Illinois, she and Christina were sexually molested by their maternal grandfather; when told of the abuse, allegedly Maria did nothing. Erica also stated the family moved a lot, and that the minors had missed a lot of school.

All of the minors reported appellants drank alcohol in front of them "to the point of intoxication." Erica told authorities appellants frequently left the minors overnight by themselves. Erica and Nicole stated appellants smoked marijuana regularly. Erica also told DSS that she had complained of pain to appellants, but that they did not seek medical attention for her. Shannon had tooth decay. Erica and Shannon claimed Lee threatened to physically harm the minors, and Nicole stated Lee often told the minors they were not his children.

All of the minors told DSS that they did not want to return to the custody of appellants. Erica declared, "I'm not going back." Erica, Nicole, and Shannon each "expressed a desire to get medical, dental, and vision treatment." Erica and Nicole also told the social worker that appellants "fight and scream at each other on a regular basis." Moreover, the report noted, during a supervised visit that all four minors indicated appellants had told the minors they were going to return home.

Erica and Nicole stated that Lee, during a telephone conversation with them, attempted to coerce them into telling DSS that the social worker's statements were not true so they could return home.

Lee told DSS he wanted to be reunited with the minors. He explained that the family had moved because of sexual abuse of the minors by the maternal grandfather. Lee claimed he no longer had an alcohol or marijuana problem. Lee did not believe it was improper to leave the minors unattended, as Erica could watch them. Lee also denied any dental or school attendance problems.

Maria acknowledged that she knew her father in Illinois had sexually molested Christina, Nicole, and Erica. According to Maria, Illinois child protective services had been involved. Maria told authorities the minors had seen a dentist in the past. Maria also stated that she had been diagnosed with ovarian cancer. She admitted being drunk when appellants were taken into custody.

The social worker's report summarized the details of the arrests of appellants for child endangerment and drunkenness in public. A sheriff's deputy determined the minors had been left in a motel unattended for the night. Erica told authorities she did not feel comfortable caring for her siblings because they were in an unfamiliar area.

Visits between appellants and the minors were problematic. After Lee blamed Erica for being jailed, Erica cried and stated she was "'deathly afraid'" of Lee. DSS had to redirect Lee

several times during one visit. On another occasion, Lee told Erica that appellants were spending money for attorney's fees due to Erica. Even during telephone conversations, appellants allegedly made inappropriate comments to the minors. According to the social worker, the minors were "repeatedly ending their telephone calls crying and emotionally distraught." After appellants tested positive for marijuana use, DSS suspended all visitation. At a September 2003 hearing, the juvenile court suspended visitation between appellants and Erica, but permitted appellants to visit Christina, Nicole, and Shannon on a supervised basis.

At the jurisdiction hearing, Maria testified that Erica did not tell Maria that Erica's grandfather had sexually molested her. Maria believed that the girls' grandfather had sexually molested all three of them. According to Maria, the minors had attended school regularly, and she did not believe Erica's complaints of pain required medical attention. Maria denied smoking marijuana in front of the minors.

Lee told the juvenile court he did not smoke marijuana in the minors' presence, but acknowledged the occasional drinking of alcohol to the point of being "[m]aybe a little tipsy." Lee claimed that appellants had taken Shannon to a dentist, and denied threatening to harm Shannon. Lee also denied telling the minors they were not his children. Lee stated he did not believe the minors had suffered any emotional difficulties, abuse, or neglect due to conduct by appellants.

At the conclusion of the jurisdiction hearing, the juvenile court sustained the amended petitions. The court ordered visitation to be under the supervision of DSS. At the disposition hearing, counsel for appellants asked the court to order DSS to arrange increased visitation. The court denied appellants any contact with Erica, and granted them only supervised telephone contact with Nicole. As to Christina and Shannon, the court granted appellants weekly supervised visits. The court also granted DSS discretion to expand, limit, or end visits between appellants and the minors. The court adjudged the minors dependent children and ordered them removed from parental custody.

DISCUSSION

I

The Jurisdictional Allegations

Appellants contend none of the allegations contained in the petitions was either properly jurisdictional in nature or supported by substantial evidence. According to appellants, there was no evidence of physical or emotional abuse by the minors, and no showing that any actions by appellants posed a risk of harm to the minors. Appellants argue the juvenile court's error in sustaining the petitions prejudiced them, creating unjustified barriers to reunification with the minors.

Our "review of the sufficiency of the evidence to support the judgment is limited to whether the judgment is supported by substantial evidence. Issues of fact and credibility are

questions for the trial court and not the reviewing court. The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." (*In re Christina T.* (1986) 184 Cal.App.3d 630, 638-639.)

Subdivision (b) of section 300 provides for jurisdiction over a minor when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Under subdivision (c) of section 300, jurisdiction may be found where "[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care." Subdivision

(d) of section 300 provides for jurisdiction in part where the parent failed to protect the minor from sexual abuse when the parent knew or should have known the minor was at risk of suffering sexual abuse.

The primary purpose of dependency proceedings is the protection of the minor. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) Section 300 requires proof the minor suffered, or there was a substantial risk he or she would suffer, serious physical harm or illness as a result of conduct by the parent. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) However, the juvenile court need not justify its findings on the basis of an actual injury to the minor. (Cf. *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004.)

In *In re Alysha S.* (1996) 51 Cal.App.4th 393, 396-397, this court held that a party in a dependency proceeding could challenge the sufficiency of the allegations contained in a section 300 petition to state a basis for jurisdiction. We required the "pleading of essential facts establishing at least one ground of juvenile court jurisdiction." (*Id.* at pp. 399-400.) As to a finding of jurisdiction under subdivision (b) of section 300, we determined "'there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.'" (*Id.* at p. 399.)

To satisfy the notice requirement of due process, the dependency petition must contain a concise statement of facts that links the statutory language to the circumstances alleged. (§ 332, subd. (f); *In re Stephen W.* (1990) 221 Cal.App.3d 629,

640; *In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397.) We construe well-pleaded facts in favor of the petition to determine if DSS has stated a basis for dependency jurisdiction. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "This does not require the pleader to regurgitate the contents of the social worker's report into a petition, it merely requires the pleading of essential facts establishing *at least one ground* of juvenile court jurisdiction." (*In re Alysha S., supra,* 51 Cal.App.4th at pp. 399-400, italics added.)

In this case, the petitions allege the statutory criteria for jurisdiction under section 300, subdivision (b), that the minors are at substantial risk of physical harm due to appellants' inability to supervise or protect the minors adequately and appellants' inability to provide regular care as a result of their substance abuse. Taken together, the supporting facts alleged are that: Appellants were arrested for public intoxication after leaving the minors unattended; the minors reported appellants drank alcohol regularly and became intoxicated in their presence; the minors' housing had been unstable and school attendance sporadic; and appellants smoked marijuana regularly in the presence of the minors. The petitions also alleged appellants neglected Shannon's and Erica's dental and medical needs and that the minors had witnessed domestic violence between appellants.

The petitions contain allegations pursuant to subdivision (c) of section 300 suggesting a connection between threatening and coercive statements made by Lee and emotional damage

suffered by the minors. Moreover, those allegations suggest a pattern of conduct by Lee that continued even after the minors were removed from parental custody. The facts alleged provide sufficient notice to appellants of the factual underpinnings of the petitions to satisfy due process of law.

We conclude the petitions contain the required essential factual allegations that both state a basis for jurisdiction under subdivisions (b) and (c) of section 300 and provide appellants adequate notice of the specific facts on which the petitions are based. (Cf. *In re Jamie M.* (1982) 134 Cal.App.3d 530, 544.) It is true the petitions also contain allegations related to the family's housing situation and frequent moves, as well as those pertaining to appellants' physical and possible emotional difficulties, that arguably have only limited relevance to the statutory bases for jurisdiction. However, as those allegations have some explanatory significance, they need not be stricken. Moreover, in light of our determination as to subdivisions (b) and (c), we need not consider appellants' claims as to the sufficiency of the petitions pursuant to subdivision (d) of section 300.

The purpose of section 300 is to protect minors from conduct or omissions by parents that place the minors at a substantial risk of suffering serious physical harm or illness. (§§ 300, subd. (b); 300.2.) In this case, the petitions alleged generally that the minors were at a substantial risk of suffering serious physical and emotional harm as a result of appellants' history of alcohol and drug use and neglect of the

minors. In evaluating the evidence, the emphasis must be on circumstances existing at the time of the jurisdiction hearing. (*In re Rocco M., supra,* 1 Cal.App.4th at p. 824.) However, evidence of past problems may be relevant to current circumstances and thus may be considered. (Cf. *In re Michael S.* (1981) 127 Cal.App.3d 348, 358.)

Viewed in the light most favorable to the judgment (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899), the record in this case supports the juvenile court's jurisdictional finding under subdivision (b) of section 300. According to statements from the minors, they were left frequently for lengthy periods of time by appellants who regularly were intoxicated in front of them and who neglected their medical and dental needs. Moreover, according to their statements, the minors were subjected to threats of physical harm and to scenes of appellants fighting with each other. As a consequence, none of the minors wished to return to appellants, and Erica, the oldest minor, made it clear she would refuse to return to appellants' custody.

Several theories to support jurisdiction were alleged. However, we need find only one ground is supported by substantial evidence to affirm the juvenile court's exercise of jurisdiction. (*In re Tracy Z., supra,* 195 Cal.App.3d at pp. 112-113.) Moreover, as we have suggested, "[w]hile evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm."

(*In re Rocco M., supra,* 1 Cal.App.4th at p. 824, italics omitted.)

As we have concluded, ample evidence shows the minors were at substantial risk of physical harm pursuant to section 300, subdivisions (b) and (c), at the time of the hearing. (*In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1133.) The evidence contained in the social worker's reports shows the minors were left unattended without a plan for their security, and that appellants frequently were intoxicated and unable to provide proper care for the minors. Moreover, the record reflects the minors observed appellants assaulting each other.

The record also contains overwhelming evidence that the minors had suffered, or were at a substantial risk of suffering, serious emotional damage, pursuant to subdivision (c) of section 300. According to the reports of clinical psychologist Laura Morrison, each of the minors had suffered various levels of trauma, distress, and anxiety due to the domestic violence, threats, and neglect to which appellants subjected them. Given the totality of the circumstances present in this case, it is hardly surprising that the minors, subjected to threats and other verbal abuse by Lee, would manifest such emotional conditions as were described by the psychologist who evaluated them.

In sum, we conclude the jurisdictional findings by the juvenile court pursuant to subdivisions (b) and (c) of section 300 are supported by substantial evidence. (Cf. *In re Basilio T.* (1992) 4 Cal.App.4th 155, 169.)

II

Visitation Orders

Appellants claim the order by the juvenile court granting DSS discretion to end their visitation with Christina, Shannon, and Nicole was an improper delegation of the judicial function to DSS. According to appellants, the problem with such an order is that it permits DSS to determine whether appellants receive any visitation at all. Appellants argue the order is invalid and should be reversed.

The difficulty with the claim of appellants in this case is that the record does not reveal counsel for appellants ever suggested any infirmity in the visitation order entered by the juvenile court. Appellants had ample opportunities to bring the issue to the attention of the juvenile court. At the hearing that is the subject of this appeal, the parties discussed the frequency of visitation. Yet, appellants made no objection nor suggested any modifications when the court explained in detail the terms of its visitation order.

Although ordinarily waiver constitutes the "intentional relinquishment of a known right," waiver also may be found from conduct that reasonably could be construed as the equivalent of an abandonment of that right. (Cf. *Rubin v. Los Angeles Fed. Sav. & Loan Assn.* (1984) 159 Cal.App.3d 292, 298.) Alternatively, "[u]nder the doctrine of invited error, where a party, by his conduct, induces the commission of an error, he is estopped from asserting it as grounds for reversal."

(*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 166.)

As has been noted in dependency decisions, if waiver or invited error were not found, a party could "trifle with the courts by standing silently by, thus permitting the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable." (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.)

The California Supreme Court stated the rule this way: "'An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the lower court by some appropriate method . . . . The circumstances may involve such intentional acts or acquiescence as to be appropriately classified under the headings of estoppel or waiver . . . . Often, however, the explanation is simply that it is *unfair to the trial judge and to the adverse party* to take advantage of an error on appeal when it could easily have been corrected at trial.' [Citation.]" (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.) "'The purpose of the general doctrine of waiver is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had . . . .'" (*People v. Walker* (1991) 54 Cal.3d 1013, 1023.) "'"No procedural principle is more familiar to the Court than that a constitutional right," or a right of any other sort, "may be forfeited in criminal as

well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." [Citation.]' [Citation.]" (*People v. Saunders* (1993) 5 Cal.4th 580, 590; cf. *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.)

Here, as the record shows, appellants acquiesced in the visitation order entered by the juvenile court. Whether denominated estoppel, waiver, or forfeiture, appellants' conduct in the juvenile court precludes them from raising the issue here. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502; *In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1200.) In any event, even if no waiver could be found under the circumstances presented (cf. *In re Hochberg* (1970) 2 Cal.3d 870, 878-879), the record does not support the claim of appellants.

By its terms, the order provides expressly for visits between appellants and Christina, Shannon, and Nicole. Only under certain limited circumstances could DSS restrict or end visits. In light of previous problems caused by appellants during visits, those conditions were reasonable. There was no improper delegation of judicial authority, abuse of discretion, or other error. (See *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.)

III

The Reunification Plans

Appellants' final claim is that the reunification plans adopted by the juvenile court were inadequate in that they

failed to address adequately the possibility of resuming regular contact between appellants and the minors. Appellants suggest the plans should have included services tailored to the circumstances present in this case, such as family counseling.

The bar of waiver or forfeiture again precludes appellants' claim. If appellants wanted to argue for the inclusion of some element in the reunification plans, they should have proffered their suggestion at the hearing. Instead, as the record reflects, they made no mention of any alleged inadequacy in the proposed plans. Accordingly, we need not consider that claim here. (See *In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 836; cf. *John F. v. Superior Court* (1996) 43 Cal.App.4th 400, 404-405.)

DISPOSITION

The orders are affirmed.

HULL, J.

We concur:

DAVIS, Acting P.J.

ROBIE, J.